



Revise Federal Substance Abuse Confidentiality Rules to Align with HIPAA and Other Related Regulations

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Federal Request

Revise the dated restrictive federal confidentiality rules specific to substance abuse treatment (42 CFR Part 2) to align with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and other related regulations such as the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009, which facilitate care coordination while preserving privacy. This change would promote integrated behavioral health and physical health care.

Current Restrictive Confidentiality Law for Substance Abuse is a Barrier to Coordination

42 CFR Part 2 is the original and primary guideline to the confidentiality of substance abuse treatment records. It was designed in 1972, in an era before electronic health records and integrated medical and behavioral health care. It was established to eliminate barriers that were preventing people from entering treatment, to protect people who had participated in treatment from stigma, and to prevent law enforcement from using substance abuse treatment records as evidence against them.

It includes well-intended but overbroad prohibitions on sharing information about clients' substance abuse treatment without their written consent, with the primary exception being in the case of a medical emergency.

Current Law Can Impede Health Care Delivery

The existing 42 CFR Part 2 does not allow for streamlined information-sharing among direct service providers for the purpose of coordination of care and improving client outcomes as HIPAA does. This means that medical and mental health providers may not know about a person's substance use or associated treatment unless a very specific release has been signed in advance. This can impede the delivery of proper health care, and at times can create significant risks to a person's health and safety.

Improved Outcomes via Integrated Care

If care providers were permitted to share substance abuse treatment data routinely, within the bounds of HIPAA and HITECH, then this would likely lead to improved outcomes for clients and better data about system performance and coordination.

Changing 42 CFR Part 2 in these ways would also support the goals of the 2014 state legislature's behavioral health and primary care integration bill, 2SSB 6312, while still protecting clients' rights.

Extend Client Protections from HIPAA/HITECH

When revising 42 CFR Part 2 to allow more information-sharing about substance abuse for the purpose of coordinated treatment and payment, it would also be best to extend key client protections (such as the "minimum necessary" disclosure standard) and criminal penalties for violators that are already codified via HIPAA and HITECH.

A Priority Issue for National Stakeholders

Revising 42 CFR Part 2 in order to create uniformity among confidentiality laws and promote coordinated care has been a priority in recent years for national and statewide stakeholder organizations such as the National Council on Behavioral Health.

Current Legislation Would Study this Issue

The Mental Health Awareness and Improvement Act, currently pending in Congress, would study barriers to integrated care that are posed by 42 CFR Part 2, along with ways to align physical and behavioral health care regulations. We support this study as a modest step toward the needed action.

Key Timing for Washington State

As governments, behavioral health organizations, and stakeholders in Washington state develop integrated care systems under 2SSB 6312 – with major steps in integration coming soon in 2016 and also in 2020 – it has become clear that addressing the differences between 42 CFR Part 2 and other privacy laws will be an important step toward more effective, more timely, and more coordinated care.

For additional information, please contact:

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